REMARKS

This responds to the non-final Office Action dated 28 December 2007. Claims 1, 7, 21, 34, 35, 42, and 62 have been amended and claims 9, 30, 39, and 51 have been cancelled. Support for these amendments can be found variously throughout the specification; including, for example, original claims 9, 30, 39, and 51. No new matter has been added. Accordingly, claims 1-8, 10, 12, 21-29, 31-38, 40-50, 52-56, and 62-68 are presently pending in the application, each of which Applicant believes is in condition for allowance. Applicant respectfully requests reexamination and reconsideration in light of the above amendments and the following remarks.

Interview Summary

Applicant thanks the Examiner for the courtesies extended in the telephonic interview conducted on 31 January 2008. In this interview, Applicant and the Examiner discussed whether Bryant, Bland, and Wang, either alone or in combination, teach of determining whether the distributed application data are already cached at the second site prior to determining a performance metric. The Examiner agreed that Bryant and Bland fail to teach or disclose this limitation, but reserved the right to more carefully examine the Wang reference.

Claim Rejections – 35 U.S.C. § 112

In the Action, claims 21-34 and 62-68 were rejected under 35 U.S.C. § 112, second paragraph, for alleged indefiniteness. Applicant thanks the Examiner for a thorough reading of the claims. In accordance with the Examiner's suggestion,

Applicant has amended claims 21 and 62 to correct a number of minor informalities. Accordingly, Applicant courteously solicits withdrawal of this rejection.

Claim Rejections – 35 U.S.C. § 103

In the Action, the Examiner rejected claims 1-8, 11, 12, 21-29, 31-38, 40-50, 52-56, and 62-68 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,078,956 to Bryant et al. ("Bryant") in view of U.S. Patent No. 5,732,218 to Bland et al. ("Bland"). The Examiner also rejected claims 9, 30, 39, and 51 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bryant in view Bland and further in view of a non-patent publication authored by Jia Wang of the Cornell Network Research Group ("Jia Wang"). Applicant respectfully traverses this rejection.

Independent claim 1 recites a method for determining one or more performance metrics for a distributed application comprising, *inter alia*, "determining whether [] distributed application data are already cached at [a] second site or must be transferred from [a] first site" and, "after determining whether the distributed application data are already cached at the second site," "executing [] machine instructions at the second site to implement [a] performance monitoring function used to determine the one or more performance metrics for the distributed application." Similarly, independent claim 21 recites, *inter alia*, "after determining whether the Web page was previously cached by the client device, determining said at least one performance metric on the client device with the browser monitoring function."

In addition, independent claim 35 recites, *inter alia*, "wherein the machine readable instructions cause the client computing device to determine whether the Web

page was previously cached by the client computing device prior to determining the at least one performance metric on the client computing device." Similarly, claim 42 recites, *inter alia*, "machine readable instructions that cause the processing device to determine if the Web page was previously cached in [] memory by the processing device" and which cause "the processing device to perform, after determining whether the Web page was previously cached, a browser monitoring function when the Web page is loaded by the processing device for rendering in the display, said browser monitoring function determining said at least one performance metric." Finally, independent claim 62 recites, *inter alia*, a "browser monitoring function [that] determine[s], after [a] step of determining whether the Web page was previously cached by the client device, at least one performance metric on the client device."

As conceded by the Examiner on page 14 of the Office Action, Bryant and Bland, either alone or in combination, fail to disclose, teach, or suggest determining whether distributed application data (or a Web page) have been cached at a second site (or by a client device) prior to determining a performance metric. The Examiner seeks to remedy the conceded deficiencies of Bland and Bryant by applying Jia Wang as allegedly teaching that "browser caches and proxy caches are well-known in the art." *Id.* The Jia Wang reference, however, fails to remedy the conceded deficiencies of Bryant and Bland.

For example, while the Jia Wang reference may arguably teach of providing a browser and/or proxy cache, this reference clearly fails to teach of determining whether such a browser or proxy cache exists for distributed application data, let alone making such a determination prior to determining a performance metric, as is required by the independent claims of the present application. In other words, while Jia Wang may

arguably disclose the basic principles of browser and proxy caches, this reference fails to disclose, teach, or suggest: 1) determining whether such a cache exists for data for a distributed application and 2) making such a determination prior to determining a performance metric for the distributed application.

Although the Examiner alleges that, in light of Jia Wang's teachings regarding the basic principles of browser and proxy caches, "it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine if the requested data has been cached prior to determining a performance metric," the Examiner has failed to point to any specific portion of Bryant, Bland, or Jia Wang that supports this assertion. Office Action at 14 (emphasis added). As a rule, "assertions of technical facts . . . must always be supported by citation to some reference work recognized as standard in the pertinent art." *In re Pardo and Landau*, 214 USPQ 673, 677 (CCPA 1982) (citations omitted). Moreover, "[a]llegations concerning specific 'knowledge' of the prior art . . . should also be supported and the appellant similarly given the opportunity to make a challenge." *Id.* Quite simply, none of the prior art references of record (including Jia Wang) specify any relationship between 1) making a cache determination and 2) determining a performance metric, let alone that such a caching determination must be made prior to determining the performance metric.

Accordingly, because Bryant, Bland, and Jia Wang, either alone or in combination, fail to disclose, teach or suggest each and every limitation of independent claims 1, 21, 35, 42, and 65, a *prima facie* case of obviousness has not been established. *See, e.g., In re Royka*, 490 F.2d 981, 985 (CCPA 1974) (holding that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art) (emphasis added); *accord.* MPEP § 2143.03 ("To establish a

prima facie case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.") (emphasis added); *see also Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989) ("The identical invention must be shown in as complete detail as is contained in the . . . claim."). Applicant therefore respectfully requests withdrawal of this rejection.

In addition, because claims 2-8, 10, 12, 22-29, 31-34, 36-38, 40, 41, 43-50, 52-56, and 62-64, and 66-68 depend from claims 1, 21, 34, 42, and 65, Applicant submits that these claims are allowable for at least the same reasons given above with respect to claims 1, 21, 34, 42, and 65. Applicant also submits that claims 2-8, 10, 12, 22-29, 31-34, 36-38, 40, 41, 43-50, 52-56, and 62-64, and 66-68 are further distinguished over the cited prior art by the additional elements recited therein, and particularly with respect to each claimed combination. Applicant, therefore, respectfully requests withdrawal of these rejections and allowance of the claims.

Conclusion

For at least the foregoing reasons, Applicant believes that each of the presently pending claims in this application is in immediate condition for allowance. Accordingly, Applicant respectfully requests a favorable action on the merits. If the Examiner has any further comments or suggestions, Applicant invites the Examiner to contact the undersigned attorney to expedite the handling of this matter.

Applicant expressly disclaims all arguments, representations, and/or amendments presented or contained in any other patent or patent application, including any patents or patent applications claimed for priority purposes by the present application or any patents or patent applications that claim priority to this patent application. Moreover, all arguments, representations, and/or amendments presented or contained in the present patent application are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application.

Respectfully submitted,

Date: 2/5/2008

Jonathan R. Lee
Registration No. 56,561